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No. 10-963

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In the Supreme Court of the United States

PROGRESSIVE CASUALTY INSURANCE COMPANY, an Ohio corporation,
Petitioner,

v.

ESTATE OF JOSE JUAN PALOMERA-RUIZ, a single man; GIANT ELECTRIC CORPORATION, an Arizona corporation,
Respondents.

On Petition for a Writ of Certiorari to the Court of Appeals of Arizona, Division One

RESPONSE OF ESTATE OF JUAN PALOMERA-RUIZ IN OPPOSITION TO PETITION FOR CERTIORARI

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QUESTIONS PRESENTED

1. Does E-SIGN invalidate the Arizona UM/UIM statute or is E-SIGN inapplicable by its own terms?

2. Does the opinion of the Arizona Court of Appeals in this case conflict with the New Mexico Supreme Court's *Jordan* opinion in a way that warrants this Court's attention?

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[1] On authority of Sup Ct. 15.3 and 24.2, the Respondent Estate omits Parties to the Proceeding, Opinions Below, and a Statement of Jurisdiction, as the Estate is satisfied with Petitioner's presentation of those sections.

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SUPPLEMENTAL STATUTORY PROVISION

With one exception, the Respondent Estate of Jose Juan Palomera-Ruiz is satisfied with Petitioner's compilation titled "Constitutional and Statutory Provisions Involved." At page 4 of its Petition, Petitioner has included the text of Ariz. Rev. Stat. § 20-259.01(B), which governs the issuance of *underinsured* motorist (UIM) coverage in Arizona. Because the underlying dispute arises from a collision with an uninsured motorist, the more appropriate reference is to subsection A of the same statute. Ariz. Rev. Stat. § 20-259.01(A), which governs the issuance of *uninsured* motorist (UM) coverage in Arizona, provides:

> **A.** Every insurer writing automobile liability or motor vehicle liability policies shall also make available to the named insured thereunder and shall by written notice offer the insured and at the request of the insured shall include within the policy uninsured motorist coverage which extends to and covers all persons insured under the policy, in limits not less than the liability limits for bodily injury or death contained within the policy. The selection of limits or rejection of coverage by a named insured or applicant on a form approved by the director shall be valid for all insureds under the policy. The completion of such form is not required where the insured purchases such coverage in an amount equal to the limits for bodily injury or death contained in the policy. The offer need not be made in the event of the reinstatement of a lapsed policy or the transfer, substitution, modification or renewal of an existing policy. At

> the request of the insured, the insured may purchase and the insurer shall then include within the policy uninsured motorist coverage that extends to and covers all persons insured under the policy in any amount authorized by the insured up to the liability limits for bodily injury or death contained within the policy.

Ariz. Rev. Stat. § 20-259.01(A).

STATEMENT OF THE CASE

This case concerns the validity of an Arizona statutory requirement that every insurer writing motor vehicle liability policies in Arizona "*shall by written notice offer the insured*" both uninsured ("UM") and underinsured ("UIM") motorist coverage "in limits not less than the liability limits for bodily injury or death contained with the policy." Ariz. Rev. Stat. §20-259.01 (A) and B) (respectively governing uninsured and underinsured motorist coverage) (emphasis added). The Arizona Supreme Court has held that this "statutory requirement of a written offer is absolute on its face." *Estate of Ball v. Am. Motorists Ins. Co.*, 888 P.2d 1311, 1314 (1995). The requirement is unwaivable, and the consequence of an insurer's noncompliance is to include UM and UIM coverage within the policy in an amount equal to the bodily injury liability limits of the policy. *Id.* at 1313 -14.

It is undisputed that Petitioner, the Progressive Casualty Insurance Company, did not make a written offer of uninsured motorist coverage to Respondent Giant Electric. It did so orally in the course of a telephone conversation, a transcript of which

Progressive has provided in its Appendix (Petitioner's App. at 78-121). Giant Electric's owner and President Christopher W. Thompson initiated the conversation by telephoning Progressive's 1-800 number, activating a recording system Progressive uses to record such calls. (Transcript, Petitioner's App. at 78-79; Koskinen Declaration, Petitioner's App. at 122-125).

Thompson informed Progressive's agent Victoria that his current $1 million liability policy with Hartford was about to renew and that he was shopping "to see where ... insurance was at." (Transcript, Petitioner's App. at 82, 85-86). After concluding that Thompson wished to maintain $1 million in liability coverage, Victoria questioned him about other elements of his Hartford policy and established that it included $1 million in UM/UIM coverage as well. (*Id.* at 90-93). Their conversation continued as follows:

> **Victoria:** Now one thing you may wanna -- it's up, this is up to you. The uninsured and the underinsured motorist coverage where you said a million dollars.
>
> **Thompson:** Yeah.
>
> **Victoria:** Technically it's up to you. Those coverages don't have to be at a million.
>
> **Thompson:** Yeah.
>
> **Victoria:** Your liability's at a million already but if you want less coverage on your underinsured ...

Thompson: That, that's kind of driven by our vendors.

***

Victoria: Usually the, they just care about the liability.

Thompson: Right.

Victoria: That's usually what their concern is. But, um, I can get your rate down a little bit if you wanna reduce the coverage on the uninsured.

Thompson: Well, I think that'd be worth lookin' at. Yeah.

***

Victoria: It's up to you. Let's see, if I go down to let's say half that, 500,000 paid in full I can bring it down to 1,278. If you wanna go down even more it'll come down even more. I can go...

Thompson: Take it down, OK.

Victoria: ... for example, uh, I don't know if you wanna go, let's say 100,000.

Thompson: Yeah.

Victoria: Um, I can bring this down to 1,177.

Thompson: So good, that'll be great.

Victoria: Is that OK?

Thompson: Yep.

(*Id.* at 99-101).

The policy was written and issued accordingly, renewed in successive years, and in force at the time of the accident from which this case arises. (Petitioner's App. at 76). Meanwhile, the recorded conversation between Thompson and Victoria was digitally archived by Progressive, first "on the call recording device's hard drive" and later on "AIT-2 tape." (Koskinen Declaration, Petitioner's App. at 122-25).

In September 2006, Juan Palomera-Ruiz, a passenger in a Giant Electric utility van insured under Progressive's policy, suffered fatal injuries in a collision with an uninsured motorist. When a dispute arose over the amount of UM/UIM coverage available to Palomera-Ruiz's Estate, Progressive retrieved the Thompson phone call recording from its archive and "burned [it] to a CD." (*Id.*)

In a declaratory judgment action filed by Progressive in the Maricopa County branch of the Superior Court of Arizona, Progressive claimed that its UM coverage limits of $100,000 per claim and $300,000 per occurrence were effective as written. The Estate responded that, as a consequence of Progressive's failure to satisfy the written offer requirement of Ariz. Rev. Stat. §20-259.01(A), the policy must be held as a matter of law to provide UM coverage in the amount equal to its $1 million liability coverage. The case was submitted on cross-motions for summary judgment, and by order of November 25,

2008, the Superior Court denied Progressive's motion and granted summary judgment in favor of the Estate. (Superior Court Order, Petitioner's App. at 13-15).

In *Progressive Casualty Ins. Co. v. Estate of Palomera-Ruiz,* 231 P.3d 384 (Ariz. Ct. App. 2010) (hereinafter, *Progressive v. Palomera-Ruiz*), the Arizona Court of Appeals affirmed the trial court's judgment (Arizona Court of Appeals opinion, Petitioner's App. at 1 – 12); and on October 26, 2010, the Arizona Supreme Court denied Progressive's Petition for Review. (Arizona Supreme Court order, Petitioner's App. at 16 - 17). Progressive's account of the disposition of its action in the Arizona courts is largely accurate with one exception. According to Progressive, the Arizona Court of Appeals "refused to address the preemptive effects of E-SIGN and AETA." (Petition at 8). This is inaccurate. The Court of Appeals did address Progressive's E-SIGN and AETA argument in a footnote that Progressive itself goes on to quote in full:

> We likewise find unavailing Progressive's claim that the recorded telephone conversation qualifies as a written notice in light of (1) the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §§ 7001 to 7006 (2000) (E-SIGN): and (2) the Arizona Electronic Transaction Act, A.R. S. §§ 44-7001 to -7501 (AETA) (2003 & Supp. 2008). Even if the electronic recording at issue qualifies as a "writing" in other contexts, neither it nor any other type of written notice was provided to the insured. Here, because the only notice Progressive extended to the insured was oral, it

> failed to satisfy A.R.S. §20-259.01's express requirement of a "written notice."

231 P.2d at 388, n. 2, *quoted* in Petition at 8-9.

This disposition, though succinct, gave adequate attention to the argument that Progressive based on E-SIGN and AETA, as both statutes are inapplicable by their own terms.

WHY CERTIORARI SHOULD NOT BE GRANTED

The single most salient fact of this matter is that Progressive made an oral telephonic offer, not a written one, to its insured.

A motor vehicle insurer is statutorily obliged in Arizona to offer UM/UIM coverage in amounts equal to the bodily injury liability limits of its policy and to convey written notice of that offer to the insured. Ariz. Rev. Stat. §20-259.01. UM/UIM coverage equal to liability coverage is imposed by Arizona law when an insurer fails to satisfy the written offer requirement. *Estate of Ball v. Am. Motorists Ins. Co.*, 888 P.2d 1311, 1313-14 (Ariz. 1995). Progressive refers to this as a "purported writing requirement contained in Arizona's statute." (Petition at 11). But there is nothing purported about it. The Arizona Supreme Court has described it as "absolute." *Ball*, 888 P.2d at 1314.

Progressive made no offer in writing. It did not mail the insured a paper copy of its offer. It did not e-mail or fax the insured an electronic copy of its offer. And though it made an electronic recording of the

telephonic sales transaction with its insured, it simply archived the recording untranscribed, neither mailing nor e-mailing nor faxing to its insured a transcription of the offer it made orally in that call. In short, Progressive engaged its insured in an entirely oral transaction, providing no written notice of its offer whatsoever, electronic or otherwise. Though electronic means to convey written notice were readily available, Progressive did not use them.

From the outset of this prolonged litigation, Progressive has sought to escape the consequences of its failure by asserting to a series of courts that, because it retained a digital recording of its oral offer, that oral offer constituted -- or should be held to constitute -- a written offer. In constructing its arguments Progressive has defied plain statutory language, including that of the federal E-SIGN statute it now moves to center stage, just as it has defied the plain meaning of language itself.

The themes of Respondent's argument are plain: (a) an oral offer is not a written offer and E-SIGN does not make it so; and (b) an electronic recording of an oral offer is not a written offer and E-SIGN does not make it so.

We have placed some emphasis on Progressive's failure to attempt by fax or e-mail to provide an electronic form of written notice of its offer to its insured. We do so because, contrary to Progressive's suggestion at page 18 of its Petition, nothing in the text or interpretation of Arizona's UM/UIM statute suggests that the requisite "offer by written notice" must be conveyed "in paper form" alone.

I. E-SIGN IS INAPPLICABLE BY ITS OWN TERMS[2]

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[2] The Estate will confine the text that follows to addressing E-SIGN, the federal statute that Progressive asserts as preemptive of the written notice requirement of Ariz. Rev. Stat. §20-259.01. In this footnote, however, the Estate will comment in passing on Progressive's curious argument that the application of §20-259.01 should have been precluded also by AETA, the Arizona Electronic Transaction Act, Ariz. Rev. Stat. §§ 44-7001 *et seq.*, if the Arizona courts had not improperly interpreted that statute.

Leaving aside that the U.S. Supreme Court does not oversee or undertake to supplant a state court's interpretation of its own state statute, Progressive's argument ignores two things: (1) the unambiguous text of AETA itself and (2) the distinction between an offer and the record of an offer.

> AETA provides in pertinent part:
>
> (A) A record or signature in electronic form cannot be denied legal effect and enforceability *solely because the record or signature is in electronic form.*
>
> (B) A contract formed by an electronic record cannot be denied legal effect and enforceability *solely because an electronic record was used in its formation.*
>
> (C) An electronic *record* satisfies any law *that requires a record to be in writing.*

Ariz. Rev. Stat. §44-7007 (emphasis added).

To examine the text in light of the distinction between an offer and the record of an offer is instructive. The Arizona courts did not find Progressive's oral agreement with Giant Electric to be deficient because the record of that transaction was in electronic form. *See* §44-7007(A). Nor did the Arizona courts find that agreement deficient because an electronic record rather than a paper record was used to maintain evidence of its formation. *See* §44-7007(B). No statutory deficiencies were alleged with respect to Progressive's recording or record keeping methodology. However satisfactorily Progressive may have recorded and preserved the record of its oral offer, what it failed to do in the course of its transaction was make the offer "by written notice."

To put the point in terms of §44-7007(C), that subsection is utterly unambiguous in providing, "An electronic record satisfies any law that requires a record to be in writing." But §20-259.01

Progressive argues that the written offer requirement of §20-259.01 is preempted by 15 U.S.C. § 7001(a), which provides:

> **(a) In general**
>
> Notwithstanding any statute, regulation, or other rule of law (other than this title and title II), with respect to any transaction in or affecting interstate or foreign commerce –
>
> (1) a signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforcement solely because it is in electronic form; and
>
> (2) a contract relating to such transaction may not be denied legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation.

15 U.S.C. § 7001(a).

In its E-SIGN argument as in its AETA argument, Progressive declines to confront the distinction between an offer and the record of an offer. Contrary to repeated assertions throughout its brief, the electronic *record* of Progressive's transaction was not denied validity or effect; the format of its record-

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does not require *a record* to be in writing. It requires *an offer* to be in writing. Had Progressive made a written offer, as §20-259.01 requires, this case would not be here. Progressive's fault lies not in the record but in the offer, and the fault is not redeemed by AETA.

keeping was irrelevant to the disposition of the case. The Arizona Court of Appeals made this clear when stating, "although the recording provides reliable evidence of what was said in the pertinent conversation, Progressive did not satisfy the statutory requirement that a "written notice" of the offer be provided." *Progressive v. Palomera-Ruiz*, 231 P.3d at 388. As we said of Progressive's invocation of AETA, (*see* n. 2, *supra*), Progressive's fault lies not in the record but in the offer, and the fault is not redeemed by E-SIGN.

Progressive also claims that "E-SIGN preempts all state laws that purport to require a writing" (Petition at 10). To the contrary, however, in 15 U.S.C. § 7001 (c) (1), E-SIGN expressly accommodates state statutes that require information relating to a commercial transaction to "be provided or made available to a consumer in writing." Pursuant to E-SIGN, one may make such "consumer disclosures" by electronic record, but only upon compliance with a detailed protocol for obtaining the consumer's consent. The statute provides in pertinent part:

> **(c) Consumer disclosures**
>
> **(1) Consent to electronic records**
>
> *Notwithstanding subsection (a) of this section, if a statute*, regulation, or other rule of law *requires that information relating to a transaction* or transactions in or affecting interstate or foreign commerce *be provided or made available to a consumer in writing, the use of an electronic record to provide or make available (whichever is required) such*

information satisfies the requirement that such information be in writing if—

(A) *The consumer has affirmatively consented to such use and has not withdrawn such consent*;

(B) The consumer, prior to consenting, is provided with a clear and conspicuous statement—

(i) informing the consumer of (I) any right or option of the consumer to have the record provided or made available on paper or in nonelectronic form, and

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(iv) informing the consumer (I) how, after the consent, the consumer may, upon request, obtain a paper copy of an electronic record, and (II) whether any fee will be charged for such copy;

(C) the consumer—

(i) prior to consenting, is provided with a statement of the hardware and software requirements for access to and retention of the electronic records; and

(ii) consents electronically, or confirms his or her consent electronically, in a manner that reasonably demonstrates that the consumer can access information in the electronic form that

will be used to provide the information that is the subject of the consent;[3] and

(D) after the consent of a consumer in accordance with subparagraph (A), if a change in the hardware or software requirements needed to access or retain electronic records creates a material risk that the consumer will not be able to access or retain a subsequent electronic record that was the subject of the consent, the person providing the electronic record—

(i) provides the consumer with a statement of (I) the revised hardware and software requirements for access to and retention of the electronic records, and (II) the right to withdraw consent without the imposition of any fees for such withdrawal and without the imposition of any condition or consequence that was not disclosed under subparagraph (B)(i); and

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[3] The consent requirement of § 7001(c)(1)(C)(ii) is qualified in § 7001(c)(2)(3), which provides:

> **(3) Effect of failure to obtain electronic consent or confirmation of consent**
> The legal effectiveness, validity, or enforceability of any contract executed by a consumer shall not be denied solely because of the failure to obtain electronic consent or confirmation of consent by that consumer in accordance with paragraph (1) (C) (ii).

This paragraph does not, however, as Progressive argued in its brief to the Arizona Court of Appeals, qualify the consent requirements of § 7001(c) (1) (A). (*See* Petitioner's App. at 221-22), It is expressly limited to the additional consent requirement of paragraph (c) (1) (C) (ii).

(ii) again complies with subparagraph (C).

15 U.S.C. § 7001 (c) (1) (emphasis added).

Subsection 15 U.S.C. 7001 (c) pertains to statutes that "require[] that information relating to a transaction be provided or made available to a consumer in writing." Arizona's UM/UIM statute meets that description in requiring that a motor vehicle insurer must "by written notice offer the insured and at the request of the insured ... include within the policy" UM and UIM coverage in limits not less than the liability limits of the policy. Ariz. Rev. Stat. § 20-259.01 (A) and (B).

Progressive claims otherwise, stating,

> Prior to this case, there was never a requirement in Arizona's UM/UIM statute that the insurer physically "provide the consumer with a contemporaneously retainable copy of the UM/UIM offer. The operative verb in Arizona's UM/UIM statute is "offer," not "provide."

(Petition at 15). This argument, however, defies common usage and understanding. While Progressive may have identified the operative verb "offer," it has neglected the adverbial phrase "by written notice" that specifies precisely how an insurer "shall ... offer" the coverage. It is impossible, at least as we understand the English language, to make an offer by written notice unless the offering party *provides* written notice of the offer.

The Arizona Court of Appeals has indeed explained why § 20-259.01 requires the requisite notice to be provided in writing to an insurance consumer:

> Nor can it be said that a literal interpretation of "written notice" leads to an absurd result or otherwise frustrates the legislature's intent. Quite the contrary. An oral notification obviously cannot be read and does not provide the same opportunity for review as does a written notice, and the insured is therefore less likely to comprehend the significance of what is being offered if he does not receive the offer in writing.

Progressive v. Palomera-Ruiz, 231 P.3d at 388.

We return, accordingly, to our point that the Arizona UM/UIM statute distinctly requires that information relating to a transaction be provided to a consumer in writing. As we have indicated, nothing in the text of the statute would have precluded Progressive from providing such information by fax or e-mail. Yet even if the statute were interpreted to require notice in paper form, E-SIGN would have accommodated such a requirement, permitting Progressive to "use an electronic record to provide" that information only if it obtained Thompson's consent to do so, advised what hardware and software he would need to receive and retain an electronic transmission, and otherwise satisfied the E-SIGN protocol. 15 U.S.C. § 7001(c) (1).

Progressive took none of the consumer protective measures that E-SIGN establishes in such circumstances. It made none of the requisite

disclosures, did not obtain consent, and most fundamentally, provided no writing whatsoever, electronic or otherwise.

Progressive asserted to the Arizona Court of Appeals that it obtained any necessary consent because, by initiating a telephonic transaction with Progressive, Giant Electric's owner voluntarily consented to do business electronically. (Petitioner's App. at 222). Thompson did not consent, however, to receive mandatory consumer disclosures by electronic record rather than a writing. *See* 15 U.S.C. § 7001(c)(1)(A). Nor was he provided an electronic record. *See* 15 U.S.C. § 7001(c)(1). Nor was he even informed, as the verbatim transcript makes plain, that the conversation was being recorded or that an electronic record of the conversation would be preserved. This is far from the informed consent that E-SIGN requires.

Progressive may argue, however, as it did to the Arizona Court of Appeals, that such disclosures were unnecessary because E-SIGN does not require compliance with its consumer consent requirements when a transaction takes place by phone. (Petitioner's App. at 221). In support of this argument, Progressive cites § 7001(c)(6), which provides:

> **(6) Oral Communications**
>
> An oral communication or the recording of an oral communication shall not qualify as an electronic record for purposes of this subsection except as otherwise provided by law.

That Progressive misinterprets paragraph 6 may be seen both in the text of that paragraph and in the

surrounding text and statutory context provided by its presence within subsection 7001 (c). Taking these points in reverse order, the thrust of subsection 7001(c) is to protect consumers, and its central element is informed consent. When other statutes, regulations, or rules of law deem information relating to a transaction so significant to a consumer that the information must be disclosed to the consumer in writing, subsection 7001(c) undertakes to assure that providing the information by electronic means will acceptably substitute for providing it in nonelectronic form. It would make no sense that Congress, after having created so detailed a protective protocol for electronic textual transmissions, would have chosen to exempt oral communications from any form of textual disclosure, electronic or otherwise. This is so because oral communications, lacking readable, much less retainable, forms of notice, fall far short of electronic textual conveyance in providing consumers the opportunity for review and reflection that consumer disclosure statutes such as § 20-259.01 seek to extend. *See Progressive v. Palomera-Ruiz*, 231 P.3d at 388.

Fortunately, the text of paragraph 6 makes it unnecessary to adopt an interpretation that makes no sense. That paragraph states explicitly that "the recording of an oral communication shall not qualify as an electronic record for purposes of this subsection," and it should be interpreted in the context of § 7001(c) as clarifying that even though such a recording may qualify for other purposes, it "shall not qualify as an electronic record" that may be used in place of a written record to satisfy the disclosure-in-writing requirements that are identified in subsection (c)(1) and the focus of subsection (c) as a whole.

II. THE OPINION OF THE ARIZONA COURT OF APPEALS IN THIS CASE DOES NOT CONFLICT WITH THE NEW MEXICO SUPREME COURT'S *JORDAN* DECISION.

In its effort to attract this Court's review, Progressive manufactures a nonexistent conflict between the Arizona Court of Appeals' disposition of this case and the New Mexico Supreme Court's decision in *Jordan v. Allstate Ins. Co.*, ___ P.3d ___, 2010-NMSC-051, Oct. 18, 2010, *reh'g denied*, Dec. 3, 2010. (Petition at 28 - 31). The cases do not conflict in either holding or rationale.

Jordan consists of three consolidated cases in each of which the New Mexico Supreme Court unequivocally upheld its state's statutory requirement "that a rejection of UM.UIM coverage equal to the liability limits in an automobile insurance policy must be made in writing and must be made a part of the insurance policy that is delivered to the insured." *Id.* at ¶2, interpreting N.M. Stat. Ann. 1978, § 66-5-301 (1983). Although the Arizona and New Mexico statutes differ somewhat in their writing requirements, the New Mexico Supreme Court described its statute's underlying policy in terms entirely consistent with the rationale of the Arizona Court of Appeals in the case below:

> Despite this Court's repeated pronouncements that an insured's decision to reject UM/UIM coverage must be *knowing and intelligent* in order to effectuate New Mexico's public policy, ... these consolidated cases indicate that insurers continue to offer UM/UIM coverage in

> ways that are not conducive *to allowing the insured to make a realistically informed choice.*

Jordan at ¶21 (emphasis added) (internal citations omitted).

While Progressive singles out one of the three consolidated New Mexico cases for comment, its facts highlight and confirm the inadequacy of the oral approach that Progressive rests on in the present case. Specifically, the New Mexico consumer in question did not purchase insurance by telephone, but through an insurer's website that provided a menu of priced UM/UIM options. After the consumer had entered requested data on the website, the insurer suggested a package that included UM/UIM coverage equal to the chosen liability limits. The consumer, however, choosing among a set of listed alternatives, instead selected UM/UIM coverage in a lesser amount. *Id.* at ¶¶ 10, 34. The New Mexico Supreme Court accepted this on-line selection as a written rejection of the higher coverage for statutory purposes, but held that the insurer had failed to satisfy the further statutory requirement of "deliver[ing] a policy that expressly alerted [the insured] that she had rejected a portion of the UM/UIM coverage to which she was entitled." *Id.* at ¶¶34, 35.

The distinctions between *Jordan* and this case are apparent. That transaction occurred on line; this one took place by phone. There, through its online menu, the insurer provided the consumer with text that she could read, review, and -- if she wished to print it -- retain. That method would have served the protective purpose that the Arizona Court of Appeals attributed to the written notice requirement -- an "opportunity for

review" that makes the consumer more "likely to comprehend the significance of what is being offered." *Progressive v. Palomera-Ruiz,* 231 P.3d at 388. No text and no such opportunity were provided in the case at hand.

CONCLUSION

This is not a case, contrary to Progressive's representation, in which Arizona, by statute or by statutory interpretation, has "purport[ed] to invalidate any possibility of a proper electronically documented notice and offer of UM/UIM coverage." (Petition at 9). Nor has Arizona statutorily or judicially impeded "the use of electronic records and signatures in e-commerce" (*Id.* at 11) by enforcing the written notice requirement of § 20-259.01. Progressive had abundant electronic means available to convey the requisite offer by written notice in this case. It used none. It made the offer orally by telephone, and it gave no written notice, electronic or otherwise. The consequences under Arizona law are clear, yet Progressive seeks to evade them by asserting preemption under a federal statute that does not apply.

For all of the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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